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Judicial Interference with Litigation in Other Courts

EDWARD DUMBAULD*

I. INTRODUCTION

A shudder of dismay ran through academic and publishing circles, especially among historians, when on January 19, 1965, Miss Helen Clay Frick, daughter of Henry Clay Frick, nineteenth century industrial tycoon, sued Dr. Sylvester K. Stevens, distinguished historian of Pennsylvania,[1] in the Court of Common Pleas

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1. "If golde rust, what then shall iron do?" If an eminent historian such as Dr. Stevens can be subjected to burdensome litigation because of

of Cumberland County, Pennsylvania. Miss Frick's cause of action was for defamation, by reason of statements in Stevens' *Pennsylvania: Birthplace of the Nation*[2] to the effect that her father was far from being a champion of labor. Miss Frick sought a permanent injunction to enjoin and prohibit the sale and distribution of the book.[3]

To the legal mind it was immediately obvious that because of at least two well-settled rules of law Miss Frick could not win her case. In the first place, an action for defamation cannot be maintained after the death of the party defamed. The old common law rule *actio personalis moritur cum persona*[4] still applies in such a situation. The Pennsylvania statute known as the Survival Act, which permits a deceased person's estate to assert claims which the deceased person could have asserted if living, contains a specific exception covering actions involving defamation.[5]

In the second place, it has been firmly established since the eighteenth century that truth is a defense in libel actions;[6] and it was common knowledge throughout western Pennsylvania among those familiar with the history of the H.C. Frick Coke Company that the statements of Dr. Stevens which offended Miss Frick were true.

Accordingly, in due course on May 25, 1967, Judge Clinton R. Weidner decided in favor of Dr. Stevens,[7] for these[8] and other[9] reasons. Until this outcome, however, Dr. Stevens had to bear

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scholarly judgments expressed in his writings, less prominent writers might well a fortiori expect to be the target of vexatious lawsuits. For a sketch of Dr. Stevens, see 98 PENNSYLVANIA MANUAL 343 (1967). After teaching history for over ten years at Penn State University, he has served as State Historian of the Commonwealth of Pennsylvania since 1937. Since 1956 he has been Executive Director of the Pennsylvania Historical and Museum Commission. He is a member of the board of the periodical *American Heritage* and past president of the American Association for State and Local History and of the American Association of Historic Sites Administrators. He is on the advisory board for publication of the Benjamin Franklin and Alexander Hamilton papers. He is author of several historical books in addition to PENNSYLVANIA: BIRTHPLACE OF THE NATION (1964).

2. This volume was published in 1964 by Random House.

3. Frick v. Stevens, 43 Pa. D. & C.2d 6, 7 (C.P. Cumb. 1967).

4. A personal right of action in the absence of contrary statute dies with the person. BLACK'S LAW DICTIONARY 47 (Rev. 4th ed. 1968).

5. "All causes of action or proceedings real or personal *except actions for slander or libel*, shall survive the death of the plaintiff or of the defendant, or the death of one or more joint plaintiffs or defendants." PA. STAT. ANN. tit. 20, § 320.601 (1950) (emphasis added).

6. Beauharnais v. Illinois, 343 U.S. 250, 295-300 (1952); E. DUMBAULD, THE BILL OF RIGHTS AND WHAT IT MEANS TODAY 136 (1957); Kelly, *Constitutional Liberty and the Law of Libel*, 74 AM. HIST. REV. 429, 431-33, 437 (1968).

7. Frick v. Stevens, 43 Pa. D. & C.2d 6 (C.P. Cumb. 1967).

8. *Id.* at 43 (action abates on death) and 47 (truth as defense).

9. Seven issues were discussed by the Court in the opinion. 43 Pa. D. & C.2d at 10-11. See text at notes 29-41 *infra*.

the inconvenience and expense of defending unmeritorious litigation.[10]

Meanwhile, the American Historical Association had bestirred itself to vindicate the freedom of speech essential to historians in the proper exercise of their craft.[11] Contributions were collected and counsel employed[12] to press the claim that historians were entitled to constitutional protection under the first amendment.[13] This claim came to a front when, at the suggestion of the Association acting jointly with the Organization of American Historians, Dr. Stevens filed suit in federal court[14] to obtain an injunction against continuance of the litigation pending against him in the Pennsylvania court.[15]

Dr. Stevens contended that it "chilled" the assertion of con-

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10. Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41 (1938): "Lawsuits . . . often prove to have been groundless; but no way has been discovered of relieving a defendant from the necessity of a trial to establish the fact." *Id.* at 51-52, Hilton v. W.T. Grant Co., 212 F. Supp. 126, 130 (W.D. Pa. 1962).

11. P. Ward, *The Role of the Joint Committee in the Frick Case*, 6 AHA NEWSLETTER 26-32 (No. 5, 1968), describes the Association's action. This paper was presented by Dr. Ward, Executive Secretary of the Association, at a panel on "Historians and the Law" on December 29, 1967, at Toronto, during the Association's annual meeting. Professor Alfred H. Kelly, on the same occasion, discussed the scope of protection available to historians under prevailing doctrines of substantive constitutional law. His paper, as revised and published, is cited in note 6 *supra*. The present writer, as chairman of the panel, endeavored to emphasize, for the benefit of non-lawyers present, the proposition that the unfavorable decisions of the New York federal courts upon the litigation sponsored by the Association did not indicate in any way a denial of the constitutional rights claimed for historians, but rather evinced merely a natural reluctance, based on the technical legal doctrines elaborated in the present article, to interfere by injunction with the due course of proceedings in another judicial tribunal of competent jurisdiction.

12. In *Free Speech and Scholarly Research*, AMERICAN COUNCIL OF LEARNED SOCIETIES NEWSLETTER 16 (Vol. XVII, No. 7, 1966), the status of the litigation was reviewed and a wider appeal for support made: "Scholars from various disciplines will probably wish to aid Dr. Stevens in meeting legal costs, which are expected to be substantial." *Id.* at 16. The law firm of former federal Judge Simon H. Rifkind handled the litigation as a public service at less than the usual fees for the work done.

13. The first amendment of the United States Constitution provides that "Congress shall make no law . . . abridging the freedom of speech, or of the press. . . ." Since 1925 the Supreme Court has held that the "freedom" protected by the first amendment is part of the "liberty" which the fourteenth amendment requires the States to respect. E. DUMBAULD, THE BILL OF RIGHTS AND WHAT IT MEANS TODAY 133 (1957).

14. Stevens v. Frick, 259 F. Supp. 654 (S.D.N.Y. 1966), *aff'd*, 372 F.2d 378 (2d Cir. 1967), *cert. denied*, 387 U.S. 920 (1967).

15. P. Ward, *The Role of the Joint Committee in the Frick Case*, 6 AHA NEWSLETTER 28-29 (No. 5, 1968). Funds amounting to $20,000 had been raised by efforts of the two organizations.

stitutionally protected federal rights of free speech for state courts to entertain libel suits such as Miss Frick's against Dr. Stevens.[16]

The District Court in New York denied the injunction.[17] This ruling was upheld on appeal.[18]

It must be emphasized that the federal courts in New York did not base their decision upon an ungenerous view as to the scope of the constitutional rights of historians to exercise free speech. As a result of Judge Weidner's decision[19] and the rulings of the Supreme Court of the United States which he followed,[20] the law is fairly clear that a conscientious historian observing the normal standards of a responsible practitioner of his craft need not fear curtailment of reasonable freedom to speak his mind. He may, of course, still risk the burdens of litigation which Mr. Justice Brandeis regarded as an inescapable part of the price of living in a society ruled by law.[21]

The federal courts based their refusal to interfere with the litigation pending in the Pennsylvania court rather upon the reluctance of any court to interfere with the normal due course of proceedings pending in another judicial tribunal.[22] The courts held that such interference is very unusual and occurs only in very special situations, none of which were present in the case at hand.[23]

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16. This contention was based upon the Supreme Court's language in Dombrowski v. Pfister, 380 U.S. 479 (1965): "The chilling effect upon the exercise of First Amendment rights may derive from the fact of the prosecution, unaffected by the prospects of its success or failure." *Id.* at 487. *See also* Sheridan v. Garrison, 415 F.2d 699, 708 (5th Cir. 1969); Cox v. Louisiana, 348 F.2d 750, 753 (5th Cir. 1965).

17. Stevens v. Frick, 259 F. Supp. 654 (S.D.N.Y. 1966), *aff'd*, 372 F.2d 378 (2d Cir. 1967), *cert. denied*, 387 U.S. 920 (1967).

18. Stevens v. Frick, 372 F.2d 378 (2d Cir. 1967), *cert. denied*, 387 U.S. 920 (1967). Three days after the denial of certiorari, Judge Weidner handed down his decision in favor of Dr. Stevens.

19. Frick v. Stevens, 43 Pa. D. & C.2d 6 (C.P. Cumb. 1967).

20. Time, Inc. v. Hill, 385 U.S. 374 (1967); New York Times Co. v. Sullivan, 376 U.S. 254 (1964); Pauling v. Globe-Democrat Pub. Co., 362 F.2d 188, 195-97 (8th Cir. 1966). The doctrines established by these cases are discussed in Kelly, *Constitutional Liberty and the Law of Libel*, 74 AM. HIST. REV. 429 (1968). On the whole it may be said that a writer or publisher is safe from liability if his work is done in accordance with accepted professional standards upon reasonable investigation and research, and is free from malice, reckless disregard of truth or falsehood, and knowingly false statements. The courts recognize that inadvertent inaccuracies are inevitable, and are outweighed by the public interest in unobstructed discussion of matters of public importance. *See* Time, Inc. v. Hill, 385 U.S. 374, 388-90 (1967).

21. *See* Kelly, *Constitutional Liberty and the Law of Libel*, 74 AM. HIST. REV. 429, 437, 450-52 (1968) and cases cited note 10 *supra*.

22. Stevens v. Frick, 372 F.2d 378, 382 (2d Cir. 1967); Stevens v. Frick, 259 F. Supp. 654, 655 (S.D.N.Y. 1966).

23. Moreover, because of considerations implicit in the federal system of government, a federal court is particularly reluctant to intrude upon the functioning of a state court. Stevens v. Frick, 372 F.2d 378, 382 (2d Cir. 1967); Stevens v. Frick, 259 F. Supp. 654, 657 (S.D.N.Y. 1966). *See also* E. DUMBAULD, THE CONSTITUTION OF THE UNITED STATES 363-67 (1964) and part IV *infra*.

II. SUMMARY OF FRICK V. STEVENS

Before entering upon the main theme of judicial interference with pending litigation, it will be useful to analyze the *Frick* case more fully.

Judge Weidner found that the statements challenged by Miss Frick,[24] even if erroneous, were not made with malice or with knowledge of their falsity or with reckless disregard of truth or falsehood, but were based upon reasonable investigation and research in accordance with the professional standards of a conscientious historian.[25] The court also emphasized the public interest in knowing the entire truth, and not merely the favorable facts about Henry Clay Frick.[26] The inappropriateness of a trial as a forum for determining the respective merits of conflicting accounts of historical events[27] was also dwelt upon.[28]

Since the plaintiff sought injunctive relief in equity, the first legal question to be disposed of by the court was whether plaintiff had an adequate remedy at law, and whether under the circumstances equity would protect personal as distinguished from property rights.[29] The court referred to *Everett v. Harron*[30] as enunciating the proposition that personal as well as property rights may be protected by injunction in appropriate cases, but held that in the case at bar no such relief was proper, since no rights of plaintiff were involved, and the remedy at law was adequate. Moreover, an injunction would have been of no practical value since the publisher of the book, Random House, was not a party before the court and subject to injunction.

The court next held that, under established principles developed by constitutional decisions relating to freedom of speech,[31] the injunction sought by plaintiff could not be granted because it would amount to a *prior restraint* upon publication.[32] The court indicated that the same rule applied by virtue of the Pennsylvania Constitution.[33]

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24. These statements were found in S. STEVENS, PENNSYLVANIA: BIRTHPLACE OF THE NATION (1964) at 209, 226, and 251 and quoted in Frick v. Stevens, 43 Pa. D. & C.2d 6, 8-10 (C.P. Cumb. 1967).
25. *Id.* at 16.
26. *Id.* at 19-20.
27. Such as the assassination of President Kennedy.
28. 43 D. & C.2d at 29-30.
29. *Id.* at 23, 28.
30. 380 Pa. 123, 130-33, 110 A.2d 383, 387-88 (1955).
31. See E. DUMBAULD, THE BILL OF RIGHTS AND WHAT IT MEANS TODAY 123 (1957).
32. 43 Pa. D. & C.2d at 33.
33. 43 Pa. D. & C.2d at 34-36. PA. CONST. art. I, § 7 provides,

The court then reached the constitutional question which had particularly interested the American Historical Association.[34] The conclusion was enunciated that, "An action for libel would not lie in the absence of the showing of malice, that is, knowledge that the statements were false, or reckless disregard of whether they were false or not."[35] There being no proof of malice on the part of Dr. Stevens, a libel action would not lie; a fortiori an injunction could not issue.

The court next reached the conclusion that likewise under Pennsylvania law the challenged publication was not defamatory.[36] In this connection, the court recognized that truth was a defense,[37] and that the historian had a "conditional privilege," which was also a long-recognized defense in libel actions.[38] Regarding the challenged statements, the court said:

> The statements claimed by plaintiff to be defamatory are not at all defamatory, but are expressive of conditions then existing. Most of the matters referred to in the alleged defamatory statements are matters of common knowledge to any public school graduate and certainly known to anyone with any historical interest. They are almost so well known and documented as to be the subjects of judicial notice. It is ironic that, considering Henry Clay Frick's personality, as recorded by history, his daughter seeks to enjoin these passages in the book, yet Henry Clay Frick himself, were he here, would be proud of them.
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> It is not defamatory to say that a man has built a monopoly in his business; that he was successful in beating down efforts at unionization; that he made extensive use of immigrant labor; that he cut wages; that he extracted the longest hours of work physically possible; that he broke the power of the union; that he was stern, brusque, autocratic; or that he caused a strike. All these are statements that are nondefamatory and mostly so conceded by plaintiff's counsel.[39]

Finally, the court held that there was no allegation in the complaint averring an invasion of Miss Frick's privacy or an intentional causing of severe emotional distress, either of which might have

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inter alia: "every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty."

34. 43 Pa. D. & C.2d at 36-42. See text at notes 9-11 *supra*.

35. 43 Pa. D. & C.2d at 41; *accord* St. Amant v. Thompson, 390 U.S. 727, 731-33 (1968); Curtis Publishing Co. v. Butts, 388 U.S. 130, 152-55, 164 (1967); and cases cited note 20 *supra*.

36. 43 Pa. D. & C.2d at 42-49. The test set forth in RESTATEMENT OF TORTS § 559 (1938) was followed.

37. 43 Pa. D. & C.2d at 47.

38. *Id.* at 48. For the distinction between absolute and conditional privilege *see* Howard v. Lyons, 360 U.S. 593, 596-97 (1959); Barr v. Matteo, 360 U.S. 564, 569-70 (1959); Kelley v. Dunne, 344 F.2d 129, 132-33 (1st Cir. 1965); Gregoire v. Biddle, 177 F.2d 579, 580-81 (2d Cir. 1949).

39. 43 Pa. D. & C.2d at 45.

been actionable under certain circumstances.[40] In disposing of plaintiff's general prayer for such other relief as may be deemed necessary and proper, in particular the suggestion that the court order Dr. Stevens to *request* the publisher, admittedly not before the court, to make corrections in the text of the book, the court concluded that plaintiff could proceed directly against the publisher in New York if her position were meritorious. Furthermore, Judge Weidner declared, "Dr. Stevens has written what he believes to be true and what this court believes to be true. No such decree will issue and no relief may be granted. Plaintiff's complaint must be dismissed."[41]

III. Instances Where Courts Will Interfere with Pending Litigation

We now proceed by way of historical analysis and an examination of current practice to consider the circumstances in which a court will interfere with litigation pending before another tribunal.

A. *Early Common Law and Its Conflict with the Ecclesiastical Courts.*

Historically, perhaps the most striking early instance of interference with pending litigation was the practice whereby the common law courts in Lord Coke's time directed writs of prohibition against the ecclesiastical courts. This controversy was extremely acrimonious, such that it came to the attention of King James I himself. It contributed substantially to Coke's fall from royal favor and his removal from office as Chief Justice of the King's Bench on November 16, 1616.

The perennial problem of the relationship between church and state produced quarrels of long standing in England, where a separate system of church courts exercised jurisdiction in certain matters.

As summarized by Holdsworth in his work on the history of English law:

> In the twelfth century the ecclesiastical courts claimed to exercise a wide jurisdiction. (1) They claimed criminal

40. *Id.* at 49; *see* Forster v. Manchester, 410 Pa. 192, 196, 189 A.2d 147, 151-52 (1963) as to when such a cause of action may be brought.

41. 43 Pa. D. & C.2d at 50. On September 6, 1967, plaintiff's appeal was withdrawn, upon learning that Dr. Stevens planned to make certain revisions in the next edition of his book. Thus both sides were able to claim a measure of victory. *See* P. Ward, *The Role of the Joint Committee in the Frick Case*, 6 AHA Newsletter at 31 (No. 5, 1968).

> jurisdiction in all cases in which a clerk was the accused, a jurisdiction over offences against religion, and a wide corrective jurisdiction over clergy and laity alike "pro salute animae". A branch of the latter jurisdiction was the claim to enforce all promises made with oath or pledge of faith. (2) They claimed a jurisdiction over matrimonial and testamentary causes. Under the former head came all questions of marriage, divorce, and legitimacy; under the latter came grants of probate and administration, and the supervision of the executor and administrator. (3) They claimed exclusive cognizance of all matters which were in their nature ecclesiastical, such as ordination, consecration, celebration of service, the status of ecclesiastical persons, ecclesiastical property such as advowsons, land held in frankalmoin, and spiritual dues.
>
> These claims were at no time admitted by the state in their entirety; and in course of time most of these branches of jurisdiction have been appropriated by the state.[42]

As early as 1166 under Henry II the Constitutions of Clarendon were enacted to settle, largely in favor of the King, the controverted question of the relations of church and state. Of uncertain date, but perhaps established by the Constitutions of Clarendon, was the assize *utrum*, a species of inquest by jury which contributed to the control of the King's courts over the land law.[43]

> The Assize Utrum was introduced originally to determine the question whether land was held in frankalmoin, i.e. by a spiritual tenure, or by some lay tenure. This was an important question in the twelfth century because upon it depended whether the spiritual or lay court had jurisdiction.[44]

Statutes of *praemunire* were enacted as early as 1354 to prevent appeals to Rome from English ecclesiastical courts.[45] These

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42. 1 W. HOLDSWORTH, A HISTORY OF ENGLISH LAW 614 (1931) [hereinafter referred to as HOLDSWORTH]. These heads of jurisdiction are discussed in greater detail in 1 HOLDSWORTH, 615-32. *See also* 1 F. POLLOCK & F. MAITLAND, THE HISTORY OF ENGLISH LAW 124-35 (2d ed. 1909); 2 F. POLLOCK & F. MAITLAND, THE HISTORY OF ENGLISH LAW 447-57 (2d ed. 1909) [hereinafter referred to as POLLOCK].

43. 2 HOLDSWORTH 179 (1923); 1 POLLOCK 137, 144-45, 246-51 (2d ed. 1909).

44. 1 HOLDSWORTH 329 (1931). By the end of the thirteenth century the king's courts had assumed jurisdiction over land held in frankalmoin as exclusive as over that held by any other free tenure. *Id.* at 630; 3 HOLDSWORTH 35 (1923). For early instances of writs of prohibition against church courts, see 2 HOLDSWORTH 305 (1923). *See also* Thorne, *The Assize Utrum and Canon Law in England*, 33 COLUM. L. REV. 428, 430 (1933).

45. Statute of Praemunire, 27 Edw. III 1 c. 1 (1354). This was a criminal statute punishing those who drew

> any out of the Realm in Plea whereof the cognizance pertaineth to the king's court, or of things whereof judgments be given in the king's court, or which do sue in any other court to defeat or impeach the judgment given in the king's court.

Id. A later statute, Statute of Praemunire, 16 Rich. II c. 5 (1392-93), was aimed at those who undertook proceedings in Rome or elsewhere to hinder the king's court's jurisdiction over presentments to benefices. 1 HOLDS-

statutes evince a trend in national policy which became more pronounced after Henry VIII declared himself head of the English church.[46] "The relations between Church and State, and the position of the ecclesiastical courts had been fundamentally altered. The church had been brought within the state; and subjected to the power of the crown."[47]

Conflicts between the two sets of courts occasionally erupted into long-remembered incidents such as the deaths of Thomas a Becket in 1170 after his controversy with Henry II[48] and of Thomas More in 1535 after his controversy with Henry VIII.[49]

When Coke became Chief Justice of the Court of Common Pleas in 1606, he vigorously defended the right of the common law courts to direct writs of prohibition to the ecclesiastical courts.[50] The preceding year Archbishop Bancroft had complained to the Privy Council regarding this interference with the functioning of church courts. The Court of King's Bench in *Fuller's Case* held

> that when there is any question concerning what power or jurisdiction belongs to ecclesiastical Judges in any particular case, the determination of this belongs to the Judges of the common law, in what cases they have cognizance and in what not.[51]

An angry confrontation between Bancroft and Coke before James I did not settle the issue.[52] It was renewed in 1611 by Abbot, Bancroft's successor as Archbishop of Canterbury. The common pleas judges stood firm under the castigation of Lord Chancellor Egerton, and were supported by other judicial dignitaries. After considerable discussion, the King resolved to issue a new commission, containing modifications of form.[53] These changes were found

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WORTH 586 (1931). *See also Premunire*, 77 Eng. Rep. 1319, 1321 (K.B. 1606).

46. 1 HOLDSWORTH 588-89 (1931).

47. *Id.* at 597.

48. On the quarrel between Becket and Henry II, see 1 STUBBS, THE CONSTITUTIONAL HISTORY OF ENGLAND 498-504, 512-13 (4th ed. 1883); 1 POLLOCK 447-57 (2d ed. 1909).

49. On the quarrel between More and Henry VIII, see E. REYNOLDS, SAINT THOMAS MORE 291, 340, 346, 354, 359 (1953); E. ROPER, THE LYFE OF SIR THOMAS MOORE, KNIGHTE 77 (James M. Cline ed. 1950); E. ROUTH, SIR THOMAS MORE AND HIS FRIENDS 206-08, 223-25 (1934).

50. Langdale's Case, 77 Eng. Rep. 1338 (K.B. 1609); 2 COKE, INSTITUTES OF COKE 601-18 (1628); 5 HOLDSWORTH 429-32 (1927). For prior use of the writ of prohibition, dating from the twelfth and thirteenth centuries, see 1 POLLOCK 129, 251 (2d ed. 1909); Adams, *The Writ of Prohibition to Court Christian*, 20 MINN. L. REV. 272-93 (1936).

51. Nicholas Fuller's Case, 77 Eng. Rep. 1322, 1323 (K.B. 1607).

52. Prohibitions del Roy, 77 Eng. Rep. 1342 (K.B. 1608); Usher, *James I and Sir Edward Coke*, 18 ENG. HIST. REV. 664-75 (1903).

53. High Commission, 77 Eng. Rep. 1361, 1362 (K.B. 1611).

unsatisfactory. After insisting that the commission be read, Coke and six other judges refused to sit on the Court of High Commission established by it.[54]

B. *Early Common Law and Its Conflict with the Jurisdiction of Equity Courts.*

Though he was deposed from his judicial office, Coke won in the long run his contest with the church courts.[55] He lost, however, in his equally bitter struggle against the chancery courts.[56] It is now settled doctrine that rules of equity prevail over those of the common law, and that an injunction may be granted to enjoin institution or prosecution of legal proceedings, and to enjoin enforcement of a judgment obtained in a court of law. This doctrine applies even where, as under the Federal Rules of Civil Procedure, the technical distinction between law and equity has been abolished.[57]

In opposing the exercise of the jurisdiction of courts of equity, Coke fought a losing, because unjust, battle. It was to the advantage of litigants that relief be available against the harsh and mechanical results arising from application of the strict law. The convenience of flexibility and the justice of effective remedies against fraud and oppression were bound to prevail.

As an illustration of the value of equity jurisdiction, consider the case of a person who had executed a bond for $1000 and subsequently paid all but $10 of his debt. The holder of the obligation could sue at law and obtain a judgment for the entire amount of the bond. Such a result is obviously against good conscience, and a court of equity, acting in personam upon the conscience of the holder of the bond, would enjoin him from enforcing his judgment for more than the $10 actually due.[58] Equity could also compel the holder of a bond which had been paid in full to surrender it to the obligor, and thus prevent its fraudulent use to bring suit for a second payment of the same debt. The advantages of such exercise of the powers of a court of equity are obvious, and Coke's obstinate opposition was certain to prove fruitless.

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54. *Id.* at 1362-63. The Court of High Commission was abolished by the Long Parliament in 1641 along with the Court of Star Chamber.

55. Coke also battled on behalf of the common law courts against the court of admiralty, but this contest, although it has left its mark upon admiralty law, did not have the same political importance as the struggle against the church and the chancery. 1 HOLDSWORTH 553-59 (1931); J. SMITH, CASES AND MATERIALS ON THE DEVELOPMENT OF LEGAL INSTITUTIONS 352-53 (1965).

56. For Coke's controversy with Lord Chancellor Ellsmere, see C. BOWEN, THE LION AND THE THRONE 312-13, 322-24 (1957); 1 HOLDSWORTH 460-65 (1931); 1 C. JOHNSON, THE LIFE OF SIR EDWARD COKE 283-90 (1837); J. SMITH, CASES AND MATERIALS ON THE DEVELOPMENT OF LEGAL INSTITUTIONS 399-412 (1965); Dawson, *Coke and Ellsmere Disinterred: The Attack on the Chancery in 1616*, 36 ILL. L. REV. 127-52 (1941).

57. *See* FED. R. CIV. P. 1, 2.

58. 1 HOLDSWORTH 457 (1931).

The Court of King's Bench, while Coke was its Chief Justice, proceeded in one case to grant judgment and execution notwithstanding an injunction obtained by the defendant meanwhile in the chancery court.[59] In another case,[60] a young gentleman learned that judgment had been confessed upon a bond of six hundred pounds which he had given for a jewel worth only twenty pounds, instead of three hundred and sixty pounds as represented by the seller. The gentleman obtained a decree in chancery that the seller should take back the jewel and acknowledge satisfaction.[61] The seller was imprisoned for failure to comply with the decree. Thereupon Coke by writ of habeas corpus released him from imprisonment.

> Coke, Chief Justice, said, that this decree and imprisonment, being after a judgment at the common law, was unlawful, and that this Court ought to relieve him; . . . Wherefore Coke and all the Court held here, that the party ought to be bailed; and they let him to bail until the next term, and he was then discharged.[62]

The dispute between Coke and Lord Chancellor Ellsmere over the question whether a court of equity could grant relief against a judgment at law was brought to the attention of King James I. The King directed his Attorney General, Coke's rival and enemy Francis Bacon, with "the Rest of his Learned Counsel" to peruse the precedents "and certify his Majesty the Truth thereof with their Opinions." Bacon, Solicitor General Henry Yelverton, the King's serjeants Montague and Crew, and the Prince's attorney John Walter certified that, according to the precedents examined by them, relief in chancery was proper. Thereupon the King by an order in council on July 14, 1616, confirmed the practice followed by the Court of Chancery and directed that it continue to grant "unto our Subjects . . . such Relief in Equity (notwithstanding any Proceedings at the Common Law against them) as shall stand with the Merit and Justice of their Cause."[63] Coke "found it convenient to make a very humiliating submission" to this decision, although he felt that it had been brought about by undue means, and he did not really relinquish his original opinions on the sub-

59. Heath v. Rydley, 79 Eng. Rep. 286 (K.B. 1614).

60. Courtney v. Glanvil, 79 Eng. Rep. 294 (K.B. 1615). Regarding the dates of the various maneuvers in this case, see Dawson, *Coke and Ellsmere Disinterred: The Attack on the Chancery in 1616*, 36 ILL. L. REV. at 145 (1941).

61. The seller was also to be paid the agreed price of 100 pounds for three other genuine jewels bought at the same time.

62. Courtney v. Glanvil, 79 Eng. Rep. at 294 (K.B. 1615). *See also* 3 COKE, INSTITUTES OF COKE 124-25 (1628).

63. 1 Chan. Rep. (App.) at 26.

ject.[64] Not long afterward, on November 16, 1616, Coke was removed as Chief Justice.[65] His fall was wittily attributed by a commentator of that day to the four P's: Pride, Prohibition, Praemunire, and Prerogative.[66]

King James I also took official notice of Coke's views on praemunire on June 20, 1616, when the monarch physically occupied the vacant chair in the Court of Star Chamber which signified his presence in contemplation of law,[67] and declared the royal pleasure with respect to praemunire.[68] Coke had invoked that statute against the victims of two rascally jewelers, Richard Granville and William Allen, but the grand jury had returned an "ignoramus."[69]

C. *Injunctive Relief from Pending Litigation Today.*

With the triumph of equity over the formalism of strict law, practice today recognizes several situations in which equity will grant injunctive relief against the institution and prosecution of legal proceedings, as well as against inequitable enforcement of judgments. Three classes of cases are specified by an authoritative writer.[70] The first, most akin to the early examples already mentioned, is where the legal judgment was obtained by fraud, mistake, or accident.[71] Other types of cases include situations involving peculiarly equitable rights (such as equitable estates in land or trusts)[72] and cases where the remedy at law would be inadequate to do complete justice, and some form of distinctively equitable relief is required (such as cancellation or reformation of a written instrument).[73]

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64. Note to Crowley's Case, 36 Eng. Rep. 514 (Ch. 1818); 3 COKE, INSTITUTES OF COKE 125 (1628).

65. 1 C. JOHNSON, THE LIFE OF SIR EDWARD COKE 334 (1837).

66. 5 HOLDSWORTH 440-41 (1927).

67. Prohibitions del Roy, 77 Eng. Rep. at 1342 (K.B. 1608).

68. C. BOWEN, THE LION AND THE THRONE 322-23 (1957). King James I exclaimed:

> Judges! keep yourselves within your own Benches, not to invade other jurisdictions, which is unfit and an unlawful thing. I thought it an odious and inept speech, and it grieved me very much that it should be said in Westminster Hall, that a praemunire lay against the Court of Chancery and officers there: How can the King grant a praemunire against himself? The Chancery is called the dispenser of the King's conscience. And therefore, sitting here in a seat of judgment, I declare and command that no man hereafter presume to sue a praemunire against the Chancery.

Id. at 322-23. According to Mrs. Bowen, the King's "coming to Star Chamber did much, it was afterwards agreed, towards the eventual disappearance of that court." *Id.* The Court was abolished by the Long Parliament in 1641.

69. 1 C. JOHNSON, THE LIFE OF SIR EDWARD COKE 286-87 (1837). Bacon wittily observed that "I think Ignoramus was wiser than those who knew too much." C. BOWEN, THE LION AND THE THRONE 313 (1957).

70. 4 J. POMEROY, A TREATISE ON EQUITY JURISPRUDENCE 973-87 (5th ed. 1941).

71. *Id.* at 983-84.

72. *Id.* at 980-81.

73. *Id.* at 981-83.

Injunction against action at law is also an incidental part of the jurisdiction exercised when a court of equity takes jurisdiction of a case in order to prevent multiplicity of suits.[74]

Normally, as Mr. Justice Brandeis has remarked, the hardship of defending unmeritorious litigation is one of the inescapable burdens of citizenship.[75] When undue hardship arises, however, as where the litigation is patently frivolous or vexatious in nature, equity will intervene.[76] The essential requirement, in order for a court of equity to be warranted in enjoining a litigant from proceeding in another court, is that grounds be established making it inequitable or against good conscience for the litigant to proceed in the other court.[77] It makes no difference, in principle, whether the enjoining court is a state or federal court, or whether the court in which the litigant is forbidden to proceed is another court of the same state, or of a different state, or a federal court.[78] Likewise it does not matter whether the court in which the litigant is forbidden to proceed is a court of law or is itself a court of equity.[79]

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74. 1 J. POMEROY, A TREATISE ON EQUITY JURISPRUDENCE 459-616 (5th ed. 1941).

75. *See, e.g.*, authority cited note 10 *supra*.

76. Note also that on grounds of public policy the law itself sometimes accords an absolute privilege on a libel or slander action which ordinarily serves as the equivalent of an injunction against the burden of defending such litigation on its merits. *See* cases cited note 38 *supra*.

77. It must also be established, of course, that the enjoining court has personal jurisdiction over the litigant. If such jurisdiction is present, a court of equity may command conduct which has consequences in another jurisdiction. Cole v. Cunningham, 133 U.S. 107, 116-21 (1890); Hart v. Sansom, 110 U.S. 151, 154 (1844).

78. There is an exception, of course, if the federal court is exercising jurisdiction "for the purpose of enforcing the supremacy of the Constitution and laws of the United States." Moran v. Sturges, 154 U.S. 256, 275 (1894); Covell v. Heyman, 111 U.S. 176, 179-80 (1884). U.S. CONST. art. VI, cl. 2 provides:

> This Constitution and the Laws of the United States which shall be made in pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

See also part IV *infra*.

79. Trees v. Glenn, 319 Pa. 487, 490, 181 A. 579, 582 (1935). The contrary view is doubtless a survival of the refusal of the English court of chancery to permit other courts to restrain anyone from proceeding in the chancery court. J. SMITH, CASES AND MATERIALS ON THE DEVELOPMENT OF LEGAL INSTITUTIONS 400 (1965). If the ground of interference were merely the lack of an equitable remedy adequate to doing complete justice (see notes 72, 73 *supra*) there might be no occasion for injunctive relief if the court in which the litigant was proceeding possessed equitable power. Absence of a full, adequate, and complete remedy "elsewhere" (rather than merely "at law") was regarded as a condition precedent to a grant of injunctive relief by the New Jersey chancellor in Bigelow v. Old Dominion

A frequently cited case,[80] illustrating the type of wrongful conduct which will call forth the power of a court of equity to restrain inequitable litigation in another tribunal, involved an attempt by Massachusetts citizens to circumvent and defeat the policy of a statute of that commonwealth relating to insolvency. The Massachusetts procedure provided for administration of an insolvent's assets by an assignee so as to prevent preference to particular creditors and to effect an equitable distribution of assets among all the creditors. In anticipation of the insolvency of a Massachusetts debtor, certain Massachusetts creditors assigned their claims to a straw party in New York who affected an attachment or garnishment of obligations owed by New York citizens to the Massachusetts debtor. Upon subsequent application by the Massachusetts assignee to a Massachusetts court, an injunction was obtained against the prosecution of the New York proceedings. The Supreme Court of the United States upheld the Massachusetts injunction, regarding the New York proceeding as an inequitable attempt *in fraudem legis*[81] *domicilii* to frustrate the policy of a statute binding upon all citizens of Massachusetts.[82]

Another excellent example of circumstances warranting an injunction is where the court in which the defendant is bringing suit lacks jurisdiction over the party seeking to enjoin the suit, so that the proceedings in that court would be treated as void and as lacking in due process.[83] Likewise injunctive relief is appropriate to prevent enforcement of a judgment obtained by fraud.[84] Equity will also under certain circumstances restrain attempts to relitigate matters already adjudicated by a court of competent jurisdiction.[85]

Copper Mining & Smelting Co., 74 N.J. Eq. 457, 474, 71 A. 153, 159-60 (1908). On the rule against interfering with another court of equity, and seven exceptions thereto, see *id.* at 478-81, 71 A. at 162-63.

80. Cole v. Cunningham, 133 U.S. 107, 122 (1890).

81. "In fraud of law." BLACK'S LAW DICTIONARY 895 (rev. 4th ed. 1968).

82. Accordingly the Court rejected the contention that the injunction was a refusal to accord full faith and credit to the New York proceedings. 133 U.S. at 112-114; *see* U.S. CONST. art. IV, § 1.

83. Simon v. Southern Ry., 236 U.S. 115, 122 (1915). Likewise injunctive relief was granted where the state court lacked jurisdiction because the suit would burden interstate commerce. Atchison, T. & S.F. Ry. v. Wells, 265 U.S. 101, 103 (1924).

84. In Wells-Fargo Co. v. Taylor, 254 U.S. 175, 180, 183-86 (1920), it was held to be fraud for the employee of an express company to obtain a judgment in a state court for personal injuries when his contract of employment relieved the railroad from liability. An injunction by a federal court was accordingly upheld. In Marshall v. Holmes, 141 U.S. 589, 596-600 (1891), a forged letter purporting to give an overseer authority to bind a landlord for supplies furnished to a tenant was used in a state court to obtain judgment against the landlord. A federal court enjoined enforcement. In Johnson v. Waters, 111 U.S. 640, 667 (1894) a fraud perpetrated by means of proceedings in a state probate court was remedied by resale of land for the benefit of creditors.

85. Since res judicata would be available as a defense where a party seeks to relitigate a matter already decided, injunctive relief may well

This situation is often presented in divorce cases, where sometimes each spouse will bring suit separately in disregard of proceedings instituted by the other spouse, or even in disregard of a decree already granted in such proceedings.[86]

IV. The Federal-State Court Dichotomy and Its Effect on Injunctive Relief from Pending Litigation

In addition to the general equitable principles governing injunctions against litigation pending in another tribunal there are special considerations which must be taken into account if one of the courts concerned is a federal court and the other a state court. These considerations flow from the nature of the system of federalism established by the Constitution of the United States.

In the first place, the mere existence of a dual system of courts imposes a certain circumspection on the actions of both sets of courts in order to avoid unseemly friction, and to ensure the effective functioning of both sets of courts.[87] Besides the general "distinction between what is national and what is local" which "is vital to the maintenance of our federal system,"[88] a rule of comity has been established that whichever court first gets possession of a particular res or specific property shall not be interfered with by the process of another court.[89]

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be denied under the Brandeis principle (*see, e.g.*, authority note 10 *supra*) unless there are circumstances of fraud or undue burdensomeness which make it inequitable to permit the second suit. Many so-called "relitigation" cases are really merely ancillary proceedings to enforce the original judgment or decree. The cases cited in notes 83, 84 *supra* cannot be so explained, however. *Cf.* cases cited note 109 *infra*.

86. Joffe v. Joffe, 384 F.2d 632, 633 (3d Cir. 1967); 3 Nelson, Divorce and Annulment § 33.06 at 432-34 (2d ed. 1945); Note, *When Courts of Equity Will Enjoin Foreign Suits*, 27 Iowa L. Rev. 76 (1941).

87. E. Dumbauld, The Constitution of the United States 363-67 (1964).

88. NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 30 (1937). *See also* Polish Nat'l Alliance v. NLRB, 322 U.S. 643, 650 (1944); Northern Securities Co. v. United States, 193 U.S. 197, 402-03 (1904).

89. Princess Lida v. Thompson, 305 U.S. 456, 466 (1939). In this case the Supreme Court was "confronted with a situation where each of the courts claiming jurisdiction has restrained the parties before it from proceeding in the other." *Id.* at 461. The Court held that the Court of Common Pleas of Fayette County, Pennsylvania, had obtained control of the trust fund involved and had properly enjoined subsequent proceedings in the federal District Court for the Western District of Pennsylvania.

Where no res is involved but the suits are in personam, both courts may proceed independently until a judgment is obtained in one which can be pleaded as res judicata in the other. Kline v. Burke Constr. Co., 260 U.S. 226, 230, 235 (1922); *cf.* Looney v. Eastern Texas R.R., 247 U.S. 214, 221 (1918); Old Dominion Copper Mining & Smelting Co. v. Bigelow, 203 Mass. 159, 221, 89 N.E. 193, 213 (1909); Bigelow v. Old Dominion Copper

In the second place, an unsound doctrine based originally upon a comment by Mr. Justice Joseph Story in one of his legal treatises has given some currency to the unfounded notion that a state court can never enjoin proceedings in a federal court.[90]

In the third place, where the supremacy clause[91] is involved it must be given effect. In this connection it is instructive to compare *Cole v. Cunningham*[92] with *Moran v. Sturges*.[93]

In *Cole v. Cunningham*, as has been seen, the Massachusetts court enjoined proceedings under an attachment in New York which would have contravened Massachusetts insolvency policy.[94] In *Moran v. Sturges* the New York insolvency court undertook to restrain proceedings arising out of an attachment of vessels in admiralty in the federal court for the Eastern District of New York. Admiralty jurisdiction, however, is exclusively given to the federal courts by the Constitution; and maritime liens on the vessels attached could not be enforced except in a federal admiralty court. Hence even if the state receiver had actually taken possession of and sold the vessels attached, such sale would not have cut off the maritime liens and the right to have them enforced.[95] Accordingly the Supreme Court held that the federal District Court had jurisdiction and that the New York injunction "was in effect an unlawful interference with proceedings in that court."[96]

The specific distinction between *Moran v. Sturges* and *Cole v. Cunningham* is that in the former case the two courts involved were not of coordinate jurisdiction. Rather the federal court had a logical and constitutional priority by reason of its exclusive jurisdiction in admiralty, without the exercise of which a complete and

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Mining & Smelting Co., 74 N.J. Eq. 457, 474, 71 A. 153, 159-60 (1908) ("possession of the controversy.")

90. The history of this notion is traced in Note, *State Injunctions Against Proceedings in the Federal Courts*, 90 U. PA. L. REV. 714-29 (1942). The notion appears to have undergone a massive resurrection in Donovan v. Dallas, 377 U.S. 408, 412-13 (1964). This case may be an outgrowth of the less objectionable rule established with regard to FELA cases in Miles v. Illinois Cent. R.R., 315 U.S. 698, 702-05 (1942); Baltimore & O. R.R. v. Kepner, 314 U.S. 44, 52-54 (1941). *See* Donovan v. Dallas, 377 U.S. at 416-21 (1964). For criticism of the *Donovan* case, see Arnold, *State Power to Enjoin Federal Court Proceedings*, 51 U. VA. L. REV. 59 (1965); Note, *State Court Power to Enjoin Federal Court Proceedings*, 59 N.W. U.L. REV. 832 (1965); Note, *Anti-Suit Injunctions between State and Federal Courts*, 32 U. CHI. L. REV. 471, 499-507 (1965); Note, *State Injunction of Proceedings in Federal Courts*, 75 YALE L.J. 150 (1965).

91. *See* note 78 *supra*.

92. 133 U.S. 107 (1890). See text at note 80 *supra* for a discussion of this case.

93. 154 U.S. 256 (1894). See note 78 *supra*.

94. 133 U.S. at 122.

95. 154 U.S. at 276-77, 285.

96. *Id.* at 286. It should be noted that the Court cited, with apparent approval, the Story doctrine referred to in note 90 *supra*. *Id.* at 268. The Court also acknowledged the *Princess Lida* doctrine referred to in note 89 *supra*. *Id.* at 274. The Court also commented on the Act of 1793, referred to in the text at note 97 *infra*. *Id.* at 268-70.

equitable liquidation of the insolvent's assets could not be effectuated.

Finally, in the fourth place, account must be taken of the statutory restriction imposed upon federal courts by federal statutory provisions in effect since 1793.[97] In its present form this statute reads:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.[98]

This enactment by Congress was cited and given weight by the federal courts in the *Stevens v. Frick* cases.[99]

In its long history,[100] however, the anti-injunction command of the Act of 1793 has been subjected by the courts to a course of erosion almost comparable to that suffered by the statutory prohibition of injunctions to prevent collection of taxes.[101] One possibile interpretation of the anti-injunction statute would be to treat it as applicable only to direct restraints operating upon the process of the other court itself. Injunctions addressed to *parties* to the litigation, rather than to the court itself, would be excluded from the coverage of the Act. At times courts have stressed this aspect of the statutory language,[102] but at other times have recognized that to enjoin the parties amounts in reality to restraining pro-

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97. Act of March 2, 1793, ch. 22, § 5, 1 Stat. 334-35: ". . . nor shall a writ of injunction be granted [by any court of the United States] to stay proceedings in any court of a state. . . ." On the legislative history of this provision, see Toucey v. New York Life Ins. Co., 314 U.S. 118, 129-32 (1941).

98. Act of June 25, 1948, 28 U.S.C. § 2283 (1964). The revisers preparing this Act added the last clause in order to overrule Toucey v. New York Life Ins. Co., 314 U.S. 118 (1941).

99. 372 F.2d at 380, 382 (1967); 259 F. Supp. at 655-56 (1967).

100. Concerning the history of judicial interpretation of the Act of March 2, 1793, see Durfee & Sloss, *Federal Injunctions against Proceedings in State Courts: The Life History of a Statute*, 30 MICH. L. REV. 1145-69 (1932); Warren, *Federal and State Court Interference*, 43 HARV. L. REV. 345 (1930); Taylor & Willis, *The Power of Federal Courts to Enjoin Proceedings in State Courts*, 42 YALE L.J. 1169-97 (1933). The ground is subsequently retraced in Note, *Federal Injunctions against Proceedings in State Courts*, 35 CALIF. L. REV. 545 (1947); Note, *Federal Power to Enjoin State Court Proceedings*, 74 HARV. L. REV. 726 (1961); and Note, *Anti-Suit Injunctions between State and Federal Courts*, 32 U. CHI. L. REV. 471 (1965).

101. See Miller v. Nut Margarine Co., 284 U.S. 498, 509 (1932); Taylor & Willis, *The Power of Federal Courts to Enjoin Proceedings in State Courts*, 42 YALE L. REV. at 1194 (1933).

102. *See, e.g.*, Simon v. Southern Ry., 236 U.S. 115, 126-27 (1915); *Ex parte* Young, 209 U.S. 123, 163 (1908).

ceedings in the court.[103] The more usual interpretation has been to treat the statute as forbidding interference during the pendency of proceedings, but to permit injunctions, otherwise warranted, before institution of proceedings or after judgment has been obtained.[104]

Mr. Justice Frankfurter's opinion in *Toucey v. New York Life Insurance Co.*,[105] extended the effectiveness of the pre-1948 version of the statute by eliminating "relitigation" cases as an exception to its coverage. After reviewing the legislative history of the Act of 1793, Mr. Justice Frankfurter noted the statutory exceptions which Congress had established to the anti-injunction policy.[106] Then, after examining judicially created exceptions to the scope of the anti-injunction policy, Mr. Justice Frankfurter concluded that the *Princess Lida* doctrine dealing with possession of a res was the only solidly established exception.[107] The "relitigation" exception was thus rejected.[108] Cases relied upon as having established such an exception[109] were explained as resting upon other grounds, such as protection of the jurisdiction of a federal court, or enforcement

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103. Donovan v. Dallas, 377 U.S. 408, 413 (1964); Oklahoma Packing Co. v. Oklahoma Gas & Electric Co., 309 U.S. 4, 9 (1940); Peck v. Jenness, 48 U.S. (7 How.) 612, 623 (1849).

104. Dombrowski v. Pfister, 380 U.S. 479, 484 (1965); Essanay Film Co. v. Kane, 258 U.S. 358, 360 (1922); Simon v. Southern Ry., 236 U.S. 115, 124 (1915). However, in Hill v. Martin, 296 U.S. 393, 403 (1935), it was held that the statute applied to proceedings to *enforce* a judgment. This raises the question whether there is a valid distinction between enforcement and prevention of enforcement of a judgment.

105. 314 U.S. 118, 137-40 (1941).

106. Id. at 132-34. These exceptions relate to the Bankruptcy Act, 11 U.S.C. § 29 (1964); removal of actions to federal courts, 28 U.S.C. § 1441 (1964) (State court may be enjoined from continuing to proceed with case which has been removed, Dietzsch v. Huidekoper, 103 U.S. 494, 497-98 (1880)); French v. Hay, 89 U.S. (22 Wall.) 250, 251 (1874); limitation of shipowners' liability, 46 U.S.C. § 185 (1964); interpleader, 28 U.S.C. § 2361 (1964); Frazier-Lemke Act, 11 U.S.C. § 203 (o), (p), (s)(2) (1946).

107. 314 U.S. at 134-39. Mr. Justice Frankfurter laid aside as not relevant to the case at bar the use of federal injunctions as a means of testing the constitutionality of State legislation. *Id.* at 137. *See* Hale v. Bimco Trading Co., 306 U.S. 375, 377-78 (1939); Philadelphia Co. v. Stimson, 223 U.S. 605, 620 (1912); *Ex parte* Young, 209 U.S. 123, 149, 155-56 (1908). This exception to the anti-injunction statute is discussed in Taylor & Willis, *The Power of Federal Courts to Enjoin Proceedings in State Courts*, 42 YALE L.J. 1169, 1190-92 (1933).

108. A true "relitigation" injunction would be one granted by court *A* to restrain parties from relitigating in court *B* a matter already adjudicated by court *C*. Such an injunction would require a showing that the litigation in court *B* would be burdensome, vexatious, or otherwise inequitable. If the matter had been previously adjudicated in court *A* itself, the situation would be simply one of effectuating a decree, as in the *Root, Looney* and *Ben Hur* cases cited in note 109 *infra*.

109. Supreme Tribe of Ben Hur v. Cauble, 255 U.S. 356, 367 (1921); Looney v. Eastern Texas R.R., 247 U.S. 214, 221 (1918); Root v. Woolworth, 150 U.S. 401, 411-12 (1893); Dial v. Reynolds, 96 U.S. 340 (1877) (The Court denied an injunction, relying on the Act of 1793. The case scarcely seems to establish an "exception").

of its judgment.[110] Indeed, a contrary holding in *Toucey* could have been upheld upon those grounds.[111] The *Toucey* decision was superseded when the revisers reworded the statute in 1948 so as to provide for an injunction by a federal court to stay proceedings in a state court "where necessary . . . to protect or effectuate its judgments."[112]

V. Conclusion

In view of the generally recognized limitations upon equitable relief against litigation pending in another court, it seems plain that the federal courts dealing with the application of Dr. Stevens to enjoin further proceedings in the Cumberland County Court of Common Pleas decided rightly not to issue the injunction prayed for. It seems equally clear that this decision was based upon technical doctrines relating to the circumstances under which such relief against proceedings in another court will be granted, and not upon an ungenerous view of the scope or extent of the constitutional rights of conscientious historians or other scholars under the first amendment.

The obstacles confronting Dr. Stevens in his quest for equitable relief were manifold. In the first place he would have had to overcome the natural reluctance of any court to interfere with the normal and due course of judicial proceedings in another court. In the second place he would have had to show that it was unduly burdensome, vexatious, or otherwise inequitable to require him to go on with the case in Cumberland County. Such a showing of unusual hardship, transcending the inconvenience which Mr. Justice Brandeis declared to be an inescapable part of the price of living in civilized society under the rule of law, would have been difficult if not impossible for Dr. Stevens to establish. Presumably he was

110. These grounds also explain the removal cases cited in note 106 *supra*, although Mr. Justice Frankfurter regards those cases as based upon an implied amendment of the Act of 1793 by the statute authorizing removal. 314 U.S. at 133, 140. It was contended in Stevens v. Frick that the Civil Rights Act, 42 U.S.C. § 1983 (1964) was likewise an implied statutory exception to the anti-injunction statute, but the court rejected this view. 372 F.2d at 381.

111. As the three dissenters, speaking through Mr. Justice Reed, forcefully contended. 314 U.S. 118, 146, 151, 153-54 (1941) (dissenting opinion).

112. Baines v. Danville, 337 F.2d 579, 588 (4th Cir. 1964); *see* note 98 *supra*. The *Baines* case also draws attention to a post-*Toucey* statutory exception in the Emergency Price Control Act of 1942, ch. 120, § 205(a), 56 Stat. 33, recognized in Porter v. Dicken, 328 U.S. 252, 255 (1946), and a further judicial exception, involving injunctions sought by the government, made in Leiter Minerals, Inc. v. United States, 352 U.S. 220, 225-36 (1957).

sued in Cumberland County because his own place of residence at Camp Hill was located there, and no other place of trial would have been more convenient for him. There was no question of "relitigation" of issues already determined in another court of competent jurisdiction, no "forum shopping" or fraudulent attempt to bring suit in a court without power to try the case. The Pennsylvania court could be relied upon to give proper weight to the defendant's constitutional rights, as was in due course demonstrated by Judge Weidner's decision.

Finally, both by reason of considerations related to the maintenance of "healthy federal-state relations,"[113] as well as by virtue of express statutory provisions in effect since 1793,[114] the federal courts in New York had good reason to avoid involvement in a controversy between two prominent Pennsylvanians.

Though *Dombrowski v. Pfister*[115] gave plausible support to the steps taken by Dr. Stevens,[116] the federal courts invoked by him were right in ruling as they did. Indeed, *Dombrowski* was itself, especially in the light of the principles heretofore reviewed, a somewhat unorthodox decision,[117] contravening the general rule that equity will not interfere with enforcement of the criminal law.[118]

Accordingly, historians and other scholars, feeling concern as to the degree of protection accorded to their freedom of speech in the course of conscientious observance of customary professional standards in their craft, need not feel alarm as a result of the failure of Dr. Stevens, in his effort sponsored by the American Historical Association, to obtain from the federal judiciary an injunction interrupting the normal handling by the Pennsylvania trial court of the litigation instituted by Miss Frick.

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113. The expression is that of Mr. Justice Frankfurter, found in Leiter Minerals, Inc. v. United States, 352 U.S. 226 (1957).

114. Act of March 2, 1793, ch. 22, § 5, 1 Stat. 334-35, discussed at notes 97-112 and accompanying text *supra*.

115. 380 U.S. 479 (1965).

116. See note 16 *supra*.

117. The decision must be viewed in the context of the peculiar obstructions placed by southern states upon the exercise of civil rights by their black population. These unusual local circumstances often distort the symmetry of orthodox legal doctrine, which is fashioned for regulation of normal conduct. See Professor Alexander Bickel's comments on Shelton v. Tucker, 364 U.S. 479 (1960), found in A. BICKEL, THE LEAST DANGEROUS BRANCH 51-54 (1962).

118. *In re* Sawyer, 124 U.S. 200, 210-11 (1888). Indeed, the Federal District Court in Stevens v. Frick, quoted language from Dombrowski itself which recognized that the usual rule forbade such interference and favored reliance upon state courts to enforce federal constitutional rights in the course of administration of criminal law, 259 F. Supp. at 657 (1967). *See also* Zwickler v. Koota, 389 U.S. 241, 253 (1967). As said in Clothing Workers v. Richman Brothers, 348 U.S. 511 (1955): "The prohibition of [28 U.S.C.] § 2283 is but continuing evidence of confidence in the state courts, reinforced by a desire to avoid direct conflicts between state and federal courts." *Id.* at 518.